UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD¹ REGION 32

STERICYCLE, INC.

Employer

and Case 32-RC-5603

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AUTO TRUCK DRIVERS, LINE DRIVERS, CAR HAULERS, and HELPERS, LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA

Petitioner

SUPPLEMENTAL DECISION AND NOTICE OF HEARING

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the objections to the election to be conducted and hereby overrules Objections Nos. 1, 2, 4, 5, and 6. Objection No. 3 is to be set for hearing.

The Election

The Petition in this matter was filed on November 14, 2008. Pursuant to a Decision and Direction of Election issued on December 19, 2008, an election by secret

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¹ Hereinafter referred to as the Board.

ballot was conducted on January 16, 2009, in the following unit:

All full-time and regular part-time route drivers, lead route drivers, dispatchers, and biotrack administrators employed by the Employer at the Employer's 1366 Doolittle Drive, San Leandro, California facility; excluding all other employees, including plant employees employed by the Employer at the Employer's 1345 Doolittle Drive, San Leandro, California facility, plant supervisors, lead plant workers, roll-off drivers, long haul drivers, shuttle drivers, warehouse workers, maintenance workers, maintenance supervisors, employees of contractors or temporary agencies, professional employees, office clerical employees, guards, and supervisors as defined by the Act.

The Tally of Ballots served on the parties at the conclusion of the ballot count on February 3, 2009 showed the following results:

Approximate number of eligible voters	36
Number of void ballots.	
Number of votes cast for Petitioner	
Number of challenged ballots	1
Valid votes counted plus challenged ballots	

Thereafter, the Employer filed timely objections to the election, a copy of which was served on the Petitioner by the Region.

The Objections

Objections Nos. 1, 2, 5, and 6

- 1. Prior to the election, the International Brotherhood of Teamsters, auto Truck Drivers, Line Drivers, Car Haulers and Helpers, Local No. 70 of Alameda County, California ("the Union") intimidated members of the voting unit to vote for the Union, causing fear in these members.
- 2. Prior to the election, the Union threatened retaliation against members of the voting unit if they did not vote for the Union.
- 5. Since the election, members of the voting unit have been threatened for speaking with other members of the voting unit who expressed support for Stericycle.

6. Prior to and since the election, members of the voting unit have also been threatened for exercising their right of free speech to discuss the Union's coercive behavior.

It is the burden of the objecting party to provide evidence in support of its objections. *Daylight Grocery Co. v. NLRB*, 678 F.2d 905, 909 (11th cir. 1982); *Lamar Advertising of Janesville*, 340 NLRB 979 (2003); *Consumers Energy Co.*, 337 NLRB 752 (2002); *Builders Insulation, Inc.*, 338 NLRB 793 (2003). The evidence must establish a prima facie case in support of the objections. *Park Chevrolet-Geo*, 308 NLRB 1010 (1992). To satisfy this burden, the objecting party may specifically identify witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objections. Id., *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983). In the alternative, the objecting party may provide specific affidavit testimony and other specific evidence in support of its objections. *Builders Insulation, Inc.*, supra.

Objections Nos. 1 and 2 allege that the Petitioner intimidated or threatened retaliation against employees to coerce them to vote for Petitioner.² Objections Nos. 5 and 6 allege that employees have been threatened³ for speaking with employees opposed to representation by the Petitioner or discussing the Petitioner's "coercive behavior." Although the Employer provided names of employees with short summaries of alleged objectionable conduct involving each of them, it failed to identify any Petitioner representative or pro-Petitioner employees who engaged in any intimidating or threatening conduct, and, more importantly, failed to identify any specific conduct, or when or where it occurred, even by unnamed individuals, alleged to be objectionable. For example, without specifying how it became aware of the following, the Employer provided the name of an employee who, after indicating to unnamed Petitioner representatives that he was against the Petitioner, supposedly "experienced coercion and

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² The Employer's assertions that employees were intimidated or threatened by the Petitioner's actions regarding a lawsuit are discussed below regarding Objections Nos. 3 and 4.

³ It is noted that these objections do not specifically attribute the alleged objectionable conduct to the Petitioner, and, in fact, it appears that the Employer is referring to the conduct of pro-Petitioner employees.

taunting." However, regarding this incident, the Employer provided no other details,⁴ which are critical in assessing the merits of its objections, and without them, the Employer has failed to fulfill its obligation to submit timely supporting evidence. See *The Daily Grind*, 337 NLRB 655 (2002).

Examination of the Employer's submission in support of its objections reveals that most of the other aforementioned summaries regarding each of the employees named therein are similarly devoid of any specific detail. Thus, for example, one of the employee summaries submitted by the Employer involves an incident prior to the election where, after the employee expressed opposition to the Petitioner, his locker was vandalized, offensive notes were left for him, and some of his property was stolen. However, the Employer failed to provide any evidence linking any of those acts to the Petitioner or any of its supporters.

Other summaries presented assert that some employees who were not vocal supporters of the Petitioner or who spoke to employees who were not supporters of the Petitioner "felt" shunned by pro-Petitioner employees and "feared" retaliation by the Petitioner and its supporters. However, the Board has long held that such subjective reactions of employees are not relevant to the question of whether there was, in fact, objectionable conduct. *Picoma Industries, Inc.*, 296 NLRB 498, 499 (1989); *Beaird-Poulan Division*, 247 NLRB 1365, 1370 (1980); see also *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122 (2003). Finally, in regard to the reference in Objection No. 6 to post-election conduct, the Board has held that post-election conduct, even by parties, will not ordinarily be grounds for valid objections. *Mountaineer Bold*, 300 NLRB 667 (1990).

Based on all of the above, Objections Nos. 1, 2, 5, and 6 are hereby overruled.

Objection No. 3

3. Before the election, the Union told members of the voting unit that they were required to file a federal lawsuit against Stericycle and hire the Union's lawyers, before the Union would file an RC petition with the NLRB. The Union agreed to front the costs and fees of the federal lawsuit. Using this lawsuit as leverage before the election, the Union

⁴ The use of the terms coercion and taunting, without more, is simply a restating of the subject objections, and does not constitute supporting evidence.

enticed members of the voting unit into supporting them by subsidizing their legal representation.

In support of this objection, the Employer avers that Petitioner representatives intimidated employees to participate in or to continue to participate in a pending federal class action wage and hour lawsuit filed on November 19, 2008 by the Petitioner's attorneys against the Employer on behalf of some or all of the Employer's employees.⁵ This objection raises substantial and material issues of fact that can best be resolved by a hearing.

Objection No. 4

4. Using this lawsuit as leverage, before the election the Union, not plaintiffs to the federal lawsuit, offered to make the lawsuit "go away" in exchange for Stericycle's agreement to sign a statewide neutrality agreement.

This objection involves the same lawsuit to which Objection No. 3 refers. The Employer provided evidence that, prior to the election, the Petitioner approached the Employer, offering to withdraw the lawsuit in exchange for the Employer signing a statewide neutrality agreement and going directly into negotiations for a collective bargaining agreement. However, none of the summaries for each of the employees whose names were provided by the Employer in support of the objections state that any employees in the voting unit were informed of the Petitioner's alleged offer to withdraw the lawsuit prior to the election. Thus, as there is no evidence that employees in the voting unit were even aware of the conduct alleged by this objection, I hereby overrule it.

Notice of Hearing

IT IS HEREBY ORDERED that a hearing on Objection No. 3 be held before a duly designated Hearing Officer of the National Labor Relations Board.

⁵ The lawsuit lists 17 of the Employer's employees as plaintiffs, but it also states that it was filed on behalf of all other similarly situated employees of the Employer.

⁶ On December 31, 2008, the Employer filed a charge against the Petitioner in Case 32-CB-6575, alleging that this same conduct violated Section 8(b)(6) of the Act. On March 5, 2009, that charge was dismissed.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within fourteen (14) days from the issuance of said report, any party may file with the Board an original and one (1) copy of exceptions to such report, with supporting brief, if desired. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, on the other party to the proceeding and with the undersigned. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

PLEASE TAKE NOTICE that on March 16, 2009, at 9:00 a.m. PST, at the Oakland Regional Office, and continuing on consecutive days thereafter until completed, a hearing pursuant to Section 102.69 of the Board's Rules and Regulations will be conducted before a hearing officer of the National Labor Relations Board upon the aforesaid objections, at which time and place the parties will have the right to appear in

person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to said matters.

DATED March 6, 2009, at Oakland, California.⁷

/s/ Alan B. Reichard

Alan B. Reichard, Regional Director National Labor Relations Board Region 32 1301 Clay Street, Suite 300N Oakland, California 94612-5211

⁷ Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, 1099 14th Street, N.W., Washington, DC, 20570-0001. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Supplemental Decision or appended to the exceptions or opposition thereto which a party submits to the Board. The request for review must be received by the Board in Washington, DC, by March 20, 2009. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the www.nlrb.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.